IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REFERENCE NO. 1 OF 2007
In
SPECIAL CIVIL APPLICATION No. 888 of 2004
with
SPECIAL CIVIL APPLICATION Nos. 22490/2006, 4134/2004,4587/2004, 5121/2004, 5697/2004, 5719/2004, 6694/2004,6699/2004, 6870/2004, 8358/2004, 9158/2004, 9206/2004,10291/2004, 10727/2004, 10769/2004, 16066/2004, 16107/2004, 16459/2004, 16482/2004, 17451/2003, 204/2005 16706/2004, 1457/2004, 1588/2004, 1648/2004, 1933/2004, 2367/2004, 2779/2004 and 3919/2004.

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner
Versus
MAGANBHAI L. MAKWANA and other parties in the respective writ petitions- Respondent

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Appearance :

MR HARDIK RAWAL, MS SEJAL K MANDAVIA, M/S HS MUNSHAW, SAURIN A SHAH, RAJESH R DEWAL, MS ROOPAL R PATEL, M/S ASHISH M DAGLI, DIPEN A DESAI, MS MONALI H BHATT for Petitioners
M/S JS BRAHMBHATT, IS SUPEHIA, PRABHAKAR UPADHYAY, KISHOR M PAUL, MAYUR S BAROT, GK RATHOD, MUKESH H RATHOD & SUNIL S JOSHI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 24/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

These matters are placed before us by virtue of an order of the Hon'ble the Chief Justice pursuant to an order passed on 3.3.2004 by the learned Single Judge observing thus:

> "Considering the aforesaid, I find that these matters require consideration by the Division Bench and as such, are required to be placed before a Division Bench of this Court **to settle the issue for scope and ambit of the power of reviewing authority as to whether the reviewing authority/appellate authority has power to enhance the punishment keeping in view the provisions of clause 8 and 9 of the Procedure referred to hereinabove."**

2. The issue relates to interpretation of Clauses 8 & 9 of the Discipline and Appeal Procedure for the Gujarat State Road Transport Corporation Employees

["the Procedure" for short]. Clauses 8 to 17 deal with questions of appeal to challenge the order passed by the competent authority in a departmental proceeding against an employee. Clause 9 runs as under :

> "The Appellate Authority may, suo motu call for enquiry papers and review the decision in any case as it may deem fit"

3. The Scheme of Discipline and Appeal Procedure makes no provision for an appeal by the Corporation (employer) against the decision of the Disciplinary Authority. Differently put, the right of appeal is given only to an employee under Clause 8, which runs as under :

> "A person against whom departmental proceedings have been taken in the manner provided under this procedure and who has been punished shall be entitled to appeal as provided in Clause 7, to the authorities prescribed in Schedule 'C' as the case may be provided that no second appeal shall lie in cases not involving dismissal, discharge, termination of services, reduction to lower post and suspension awarded as punishment and stoppage of increment with cumulative effect, recovery of loss or damage exceeding

Rs.30/-"

3.1 In several cases, the Appellate Authority adopted a practice of taking the matter in review; suo motu; after calling for the enquiry papers in cases where it was found that the punishment awarded is either inadequate or where no punishment is awarded erroneously. This was done in purported exercise of powers under Clause 9 of the Procedure. This exercise of power came to be challenged before this Court in case of ***Gujarat State Road Transport Corporation v. D.L.Patel, reported in 2003(1) GLR 348***, wherein a learned Single Judge took the view that unless there are express provisions under the Clause, the power of review cannot be exercised for enhancement of punishment.

3.2 In special Civil Application No. 11349/2002 (G.S.R.T.C. v. Ishwarbhai Madhabhai Patel), another learned Single Judge of this Court, by order dated 5.2.2003, took the view that Clause 9 can be resorted to by the Appellate Authority for enhancement of punishment.

3.3 The order passed in the case of G.S.R.T.C. v. D.L.Patel (supra) is carried in appeal, which is

pending.

3.4 When the present matters came up before yet another learned Single Judge, noting two differing views expressed by two Judges, as narrated above, the learned Single Judge referred the matter to a Division Bench to settle the question of scope and ambit of the power of the reviewing authority/appellate authority on the question whether the said authority has power to enhance punishment awarded by the competent authority in a departmental proceedings in the light of the provisions contained in Clauses 8 & 9 of the Procedure.

4. Gujarat State Road Transport Corporation ["the Corporation", for short] is represented by several advocates, out of whom Mr.Hardik Raval has taken lead and others have adopted his arguments. Learned Advocate Mr.Raval submitted that if the Scheme of the Procedure is seen, there are no provisions for an appeal by the Corporation (employer), in an event, where the competent authority comes to the conclusion that the misconduct is not proved or in case where punishment awarded by the competent authority is inadequate. In absence of these powers, the

provisions contained in Clause 9 have to be interpreted, which gives even suo motu powers to the Appellate Authority to call for enquiry papers and review the decision in any given case as it may deem fit. Mr.Raval submitted that the language of clause 9 is of a very wider import, and he put emphasis on the words ***`suo motu', `to review the decision', `in any case' and `as it may deem fit'***. He submitted that these powers are thus unfettered and can be exercised in any proceeding, even suo motu, and the decision can be reviewed in any manner as it may deem fit, which would include enhancement of punishment also. He submitted that for interpreting this clause, there is no need to draw support from any other provisions.

4.1 Mr.Raval submitted that if clause 10 is perused, it gives powers to examine the question of inadequacy of punishment even in a case where appeal is preferred by a workman. This absolute suo motu power can be exercised with a wider view. Mr. Raval further submitted that if interpretation, as made by the learned Single Judge, in case of **G.S.R.T.C v. Ishwarbhai Madhabhai Patel** (supra) and certain observations made in the reference order are not

accepted, that would render the Corporation (employer) non-suited and it would be denied the right to have an erring employee properly punished.

5. Learned Advocate Mr.Prabhakar Upadhyay submitted that clause 9 does not contain any express power for enhancement of punishment. He also submitted that if such power is read into in clause 9, it would mean that the Appellate Authority and the Reviewing Authority is the same, which is not proper or permissible. He submitted that if the Corporation is aggrieved, it can exercise powers under Clause 20 and pass orders of remand, as provided under Clause 14 of the Procedure.

6. Learned Advocate Mr.Supehia, while joining Mr.Prabhakar Upadhyaya, submitted that if clause 10 is read, it provides for examining the question of adequacy or inadequacy of punishment only in cases where an appeal under Clause 8 is preferred by the workman and not otherwise. He submitted that clause 14 has to be resorted to by the Appellate Authority and the matter is required to be remanded to the competent authority, as provided therein, but, the Appellate Authority cannot enhance the punishment. He

also laid emphasis on clause 20 of the Procedure, and submitted that the view expressed by the learned Single Judge in case of **D.L. Patel** (supra) is the proper view and the question may be answered accordingly.

7. Reflecting/ Replying to the submissions made by learned Advocates Mr.Upadhyay and Mr.Supehia, learned advocate Mr.Raval submitted that clause 20 is only an enabling provision, which has to be used by the officer superior to the competent authority or appellate authority, where it can exercise inherent powers in an exceptional case. Mr.Raval submitted that clause 9 is self-sufficient and provides for exercise of powers, in any case, suo motu, and pass an order as deemed fit. Mr.Raval submitted that clause 14, if read closely, implies that the powers of the appellate authority cannot be delegated and while examining a matter if the appellate authority finds some procedural irregularities/lapses, which may vitiate the decision of the competent authority, the matter may be remanded to the competent authority to make up the irregularities, and to submit the case to the authority thereafter, and as such, will have no bearing on the powers given to the Appellate

Authority under clause 9. Mr. Raval relied on the decision in case of ***Maharashtra State Road Transport Corporation v. R.D. Toplewar & Anr., 1987 LAB.I.C. 789***, where a view is taken that the powers under clause 9, though nomenclatured as `reviewing powers', are, in fact, revisional powers.

8. We have heard the learned Counsel for the parties at length and in great detail, and have also perused the orders passed by the learned Single Judge.

9. We have examined the Discipline and Appeal Procedure for the Gujarat State Road Transport Corporation Employees. The provisions regarding appeals against the orders of competent authority in disciplinary proceeding are stated in Clauses 8 to 17.

9.1 Clause-8 provides that a person, against whom departmental proceedings have been taken in the manner provided under the Procedure and **who has been punished, shall be entitled to appeal** and also provides for certain other qualifications, but, the

crux lies in the fact that it provides for an appeal, only by a person against whom departmental proceedings have been taken and who has been punished. Differently put, clause 8 does not provide for a right of appeal to the employer (Corporation) whether it may be aggrieved either because of the delinquent being discharged or because of inadequate punishment.

9.2 Clause-9 provides that the Appellate Authority may, suo motu, call for the enquiry papers and review the decision in any case, as it may deem fit.

9.3 Clause-10 provides for more or less jurisdiction of the Appellate Authority in a case, where an appeal is preferred by the delinquent against an order imposing any punishment, and it provides that the Appellate Authority shall consider whether the facts, on which the order was based, have been established; whether the facts established afford sufficient ground for taking action, and whether the punishment is excessive, adequate or **inadequate** and after such consideration, shall pass such order as it thinks proper.

9.4 Clause-11 makes the order of the Appellate Authority binding to the Authority, from whose order an appeal is preferred.

9.5 Clauses 12 & 13 provide that every person preferring appeal shall do so separately in his own name and detail as to the contents of the appeal etc.

9.6 Clause 14 provides that the authority, to whom an appeal lies under these provisions, shall decide it himself and pass such orders on the appeal, as he thinks fit. It also expects the Appellate Authority to verify whether the prescribed procedure has been followed by the Inquiry Officer, or whether there was any material irregularity likely to vitiate the decision of the competent authority. It also provides that if the Appellate Authority finds such irregularity, it may direct the competent authority to make up irregularities and submit the case to the Appellate Authority.

10. From the above narration, it is clear that the provisions relating to appeals, do not provide for a right of appeal by the employer. This would not permit employer to make good its case. Care has to be

taken to see that both the sides are afforded even opportunity to make good their cases and in case they are aggrieved by the order of the competent authority, both the sides get equal right or opportunity to approach a higher forum. This provision has, therefore, to be read in a manner which would create a just and harmonious situation.

10.1 From the Scheme of the Procedure, we find that the only power, which can be read to be with the Appellate Authority in the mater of enhancement of punishment or in case of discharge of a delinquent, has to be under Clause 9 of the Procedure. If an order is passed by the competent authority, which aggrieves the delinquent, he has a right of appeal as provided under Clauses 7 & 8. But, if the order of competent authority aggrieves the employer (Corporation), the source of powers is found in Clause-9, as it invests Appellate Authority with powers to, suo motu, review the order by competent authority. If this construction is not given and clause 9 is read to limit the powers of the Appellate Authority only for the purpose of the procedural aspect, the object of investing the Appellate Authority with the powers to review the decision of

the competent authority would be frustrated. If it was intended not to provide any remedy to the Employer/Corporation in a situation of decision of competent authority going against it, there was no need to incorporate Clause-9, since right of appeal is already provided in Clauses 7 & 8. In our view, clause 9, though not worded with exactness, is intended to empower the Appellate Authority to examine orders of Competent Authority which may not come in appeal i.e. which do not go against employee and are not likely to aggrieve the employee.

10.2 It is this lack of accuracy, which has resulted in use of word `review' in clause-9. It is right to contend that `review' has to be by the same authority who passes the order and `review' by Appellate Authority can not be contemplated, but here, if the Scheme of the Procedure is seen, the word `review' used in clause-9 has to be read to mean revision. Differently put, clause-9 invests the Appellate Authority with revisional powers in a given set of situation.

11. We have reasons for taking the above view. If Clause 10 is seen, it empowers the Appellate

Authority to examine the questions, whether the punishment is excessive, adequate or inadequate, and after doing so, pass such order as it thinks proper. The power, therefore, is not only for examining the question, whether the punishment is excessive or adequate, but, also to examine whether it is inadequate, and these powers are vested in the Appellate Authority even in a situation, where appeal is preferred by the delinquent, who is aggrieved by the order of punishment. Therefore, if the Appellate Authority enjoys powers to examine question of inadequacy of punishment while examining an appeal of the employee, Clause-9 has to be read so as to invest the Appellate Authority with suo motu powers to call for enquiry papers, and to review/revise the decision as it may deem fit. The words "as it may deem fit" have to be given a wide import as to empower the Appellate Authority to enhance the punishment also only then the equity will be established.

12. At this stage, we may refer to a decision in **Maharashtra State Road Transport Corporation v. R.D.Toplewar & Anr. 1987 LAB. I.C. 789,** where Clause-9 relating to the Maharashtra State Road Transport

Corporation, which is similar to Clause-9 in the Procedure here, came to be examined, and it was observed that the power of review, in fact, is a revisional power conferred upon the Appellate Authority. We are also of the same view.

13. A contention was raised before us that Clause 20 is the clause which has to be resorted to in the event the Corporation finds that the punishment imposed is inadequate or the order of discharge of the delinquent is improper. Clause-20 runs as under:

> "20. The Appellate Authorities appointed by the Corporation for hearing appeals and reviewing cases are those shown in Schedule `C'. Any officer higher than the prescribed Appellate Authority has inherent powers to call any case papers and review the decision or hear the appeal or direct any other authority to hear the appeal."

13.1 A plain reading of Clause 20 makes it clear that it speaks of inherent powers of any officer higher than the prescribed Appellate Authority to call for papers of any case and review the decision or hear the appeal or direct any other authority to hear the appeal. This clause, therefore, deals with

inherent powers of officer higher than prescribed Appellate Authority and not that of the Appellate Authority. The powers also include power to hear an appeal or direct another authority to hear the appeal. By this provision situation contemplated are different and include hearing of appeal by higher officer or by another authority. Further, these are the inherent powers which may be used in exceptional situation. We are, therefore, not able to accept the contention that Clause 20 can be and has to be resorted to in such a situation.

14. It was also contended that Clause 14 has to be resorted to in the event the Appellate Authority finds that the punishment is inadequate and the matter should be remanded to the competent authority. We are unable to accept this contention either. Clause-14 runs as under :

> "The authority, to whom an appeal lies under these provisions, shall decide it himself and shall pass such orders on the appeal as he thinks fit, after verifying whether the prescribed procedure has been followed by the Enquiry Officer and whether there was any material irregularity likely to vitiate the decision of the Competent Authority (or the 1st Appellate Authority in case of a second appeal).

> In case the Appellate Authority feels that there has been such an irregularity, it may direct the Competent Authority (or the 1st Appellate Authority in case of a second appeal) to make up the irregularity and to submit the case to the Appellate Authority".

14.1 This clause, if read, makes two provisions. The first being that the Appellate Authority has to decide the appeal himself and pass such orders on the appeal as it thinks fit. This would mean that the Appellate Authority cannot delegate its powers to anybody-else.

14.2 Clause-14 also envisages that the Appellate Authority has to examine the question whether Inquiry Officer has committed any material irregularity in conduct of the inquiry, which is likely to vitiate the decision of the competent authority, and if such material irregularity is found, the Appellate Authority may direct the competent authority to make up or cure the irregularity and then submit the case to the Appellate Authority. The contention, therefore, that the Appellate Authority, under Clause-14 in case of inadequate punishment, has to send back the papers to the competent authority, cannot be accepted, because ultimately, the papers

are required to be sent back to the Appellate Authority for consideration. The remand of the case is only for the limited purpose of curing a material irregularity, which may have been found by the Appellate Authority and, which, in its opinion, is likely to vitiate the decision of the competent authority.

15. Ordinarily, powers of review are contemplated in respect of the same authority who passes the order. But, here, these powers are vested in the Appellate Authority and have to be considered as revisional powers rather than review powers.

16. In view of what is discussed above, we hold that Clause-9 empowers the Appellate Authority to call for the papers of any case for review. Obviously, these powers would include the powers to enhance the punishment in case it is found to be inadequate. We may hasten to add that, for doing so, the Appellate Authority, as it is expected, should give an opportunity to the delinquent for putting forward his case on adequacy or inadequacy of punishment. The powers can be exercised even in case where the delinquent is held to be not guilty of and is discharged of the charges against him by the

competent authority.

17. The Reference is answered accordingly. The Special Civil Applications, which are tagged with this Reference, involve several other questions on merits, besides the question answered by us in this Reference and, therefore, the same will have to be considered on merits. They are, therefore, required to be remitted to appropriate Bench for decision on merits. The Registry, therefore, to take appropriate steps for the purpose.

[A.L.DAVE,J.] [SHARAD D.DAVE,J.]

(patel)